

OGC 83-01422
18 February 1983

25X1 MEMORANDUM FOR: [REDACTED]
OP/PAB

25X1 FROM: [REDACTED]
Office of General Counsel

25X1 THROUGH: [REDACTED]
Chief, Administrative Law Division

SUBJECT: Advance of Sick Leave

25X1 1. This memorandum is in response to your request for guidance in the case of an Agency employee [REDACTED] 25X1
[REDACTED] who had used all of his sick leave and was then erroneously advanced 536 hours of sick leave. The employee has 135 hours of available annual leave. [REDACTED] 25X1
paragraph 3f, authorizes only 240 hours of advanced sick leave. The question asked is what amount paid for advanced sick leave must be refunded if the employee retires for disability. (C)

25X1 2. The Agency, pursuant to authority contained in Section 8 of the CIA Act of 1949, as amended, can set up its own leave system. Using this authority, the Agency has chosen, as a matter of policy, to adopt the leave system which is set up under Title 5 of the United States Code. Consequently, [REDACTED] which sets forth Agency leave policy, is not mandated by statute, and provisions of this regulatory issuance can be waived by the DDA pursuant to authority contained in [REDACTED] 25X1
Accordingly, if appropriate justification is provided and if the DDA deems a waiver of the 240 hour limit to be in the interests of the United States, the advance of sick leave in excess of 240 hours could be deemed to have been proper and would not have to be charged against annual leave under [REDACTED] paragraph 3f(3). The employee would then not have to refund payment for the 536 hours of properly advanced sick leave because of the exception. 25X1
25X1 contained in [REDACTED] paragraph 3f(4), which applies inter alia to employees who retire for disability. (U)

C O N F I D E N T I A L

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3. In the absence of a waiver by the DDA, the employee improperly advanced 296 hours of sick leave must offset the improperly advanced sick leave against available annual leave (135 hours). The remaining improperly advanced sick leave (161 hours) represents an overpayment which can be considered for waiver by the Agency under 5 U.S.C. 5584, and should be referred to the Overpayments Review Board pursuant to [redacted] The employee would not have to refund payment for the 240 hours of properly advanced sick leave because of the exception contained in [redacted] paragraph 3f(4). (U)

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